

**Notice of Allowability**

Application No.

09/045,386

Examiner

Andrew Joseph Rudy

Applicant(s)

WALKER ET AL.

Art Unit

3627

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--**

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 14 October 2005 Appeal Brief.
2. ☒ The allowed claim(s) is/are 11,14,25,26 and 35-40.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some\* c) ☐ None of the:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
- (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
- 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
- (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

**Attachment(s)**

- |                                                                                                                     |                                                                                        |
|---------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------|
| 1. <input type="checkbox"/> Notice of References Cited (PTO-892)                                                    | 5. <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)            |
| 2. <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                | 6. <input type="checkbox"/> Interview Summary (PTO-413),<br>Paper No./Mail Date _____. |
| 3. <input type="checkbox"/> Information Disclosure Statements (PTO-1449 or PTO/SB/08),<br>Paper No./Mail Date _____ | 7. <input checked="" type="checkbox"/> Examiner's Amendment/Comment                    |
| 4. <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit<br>of Biological Material          | 8. <input checked="" type="checkbox"/> Examiner's Statement of Reasons for Allowance   |
|                                                                                                                     | 9. <input checked="" type="checkbox"/> Other <u>Restriction</u> .                      |

**DETAILED ACTION**

1. Claims 11, 14, 25, 26 and 33-40 are pending.
2. Applicant's Appeal Brief submitted October 14, 2005 is persuasive as to overcoming the 35 USC 101 and 35 USC 112 rejections. Thus, these rejections are withdrawn.

***Election/Restrictions***

3. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claims 11, 14, 25, 26 and 35-40, drawn to a method/apparatus for controlling the performance of a supplementary process at a point-of-sale terminal . . . measuring an activity rate, classified in class 705, subclass 16.
  - II. Claims 33 and 34, drawn to a supplementary process at a point-of-sale terminal . . . receiving an override signal, classified in class 705, subclass 16.

The inventions are distinct, each from the other because of the following reasons:

4. Inventions Group I and Group II are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct from each other if they are shown to be separately usable. In the instant case, invention Group I has separate utility such as a method/apparatus of processing lottery tickets. See MPEP § 806.05(d).

5. Because these inventions are distinct for the reasons given above and the search required for Group I is not required for Group II, restriction for examination purposes as indicated is proper.

6. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

7. During a telephone conversation with Michael Downs (Reg. No. 50,252) on December 27, 2005 a provisional election was made without traverse to prosecute the invention of Group I, claims 11, 14, 25, 26 and 35-40. Affirmation of this election must be made by applicant in replying to this Office action. Claims 33 and 34 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

8. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

#### **EXAMINER'S AMENDMENT**

9. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided

by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Michael Downs (Reg. No. 50,252) on December 27, 2005.

The application has been amended as follows:

Claims ~~33~~ and ~~34~~ are cancelled.

***Allowable Subject Matter***

10. Claims 11, 14, 25, 26 and 35-40 are allowed.

11. The following is an examiner's statement of reasons for allowance: The prior art, either alone or in combination, do not disclose nor suggest a point-of sale method/apparatus measuring an activity rate of a point-of sale terminal and providing a supplementary product offer in combination with the other claim language as recited.

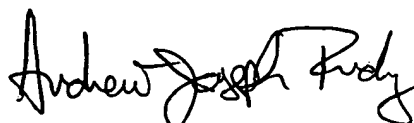
***Conclusion***

12. Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrew Joseph Rudy whose telephone number is 571-272-6789. The examiner can normally be reached on Monday thru Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Alexander G. Kalinowski can be reached on 571-272-6771. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, reading "Andrew Joseph Rudy". The signature is fluid and cursive, with the first name "Andrew" being the most prominent.

Andrew Joseph Rudy  
Primary Examiner  
Art Unit 3627